

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JANA SMITH,

Plaintiff,

v.

TACOMA SCHOOL DISTRICT,

Defendant.

CASE NO. C19-5910 BHS

ORDER DENYING PLAINTIFF'S  
MOTION TO COMPEL

This matter comes before the Court on Plaintiff Jana Smith's ("Smith") motion to compel. Dkt. 28.

On September 5, 2019, Smith filed a petition for judicial review in Pierce County Superior Court for the State of Washington seeking review of a decision by Defendant Tacoma School District ("District"). Dkt. 1-2.

On September 29, 2019, the District removed the matter to this Court. Dkt. 1.

On March 5, 2020, Smith filed the instant motion to compel discovery that she propounded on some of the District's current and former employees. Dkt. 28. On March 16, 2020, the District responded. Dkt. 29. On March 18, 2020, Smith filed a declaration. Dkt. 31.

The Court denies Smith's motion for two reasons. First, Smith fails to certify that she met with the District in an attempt to resolve the dispute without Court intervention.

1 See Fed. R. Civ. P. 37(a)(1) (“The motion must include a certification that the movant has  
2 in good faith conferred or attempted to confer with the person or party failing to make  
3 disclosure or discovery in an effort to obtain it without court action.”). This procedural  
4 failure is fatal to her motion.

5 Second, Smith fails to establish that additional discovery is either allowed or  
6 necessary in this action for administrative review. Under the Individuals with Disabilities  
7 Education Act (“IDEA”), the Court “shall hear additional evidence at the request of a  
8 party . . . .” 20 U.S.C. § 1415(e)(2). “The starting point for determining what additional  
9 evidence should be received, however, is the record of the administrative proceeding.”  
10 *Ojai Unified Sch. Dist. v. Jackson*, 4 F.3d 1467, 1473 (9th Cir. 1993) (citing *Town of*  
11 *Burlington v. Dep’t of Educ.*, 736 F.2d 773, 790–91 (1st Cir. 1984)). Moreover,  
12 “additional evidence” must “be non-cumulative, relevant, and otherwise admissible . . . .”  
13 *E.M. ex rel. E.M. v. Pajaro Valley Unified Sch. Dist. Office of Admin. Hearings*, 652 F.3d  
14 999, 1005 (9th Cir. 2011). Smith has failed to establish that her discovery requests are  
15 necessary in light of the administrative record or are otherwise relevant. Therefore, the  
16 Court **DENIES** Smith’s motion.

17 **IT IS SO ORDERED.**

18 Dated this 26th day of May, 2020.

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21 BENJAMIN H. SETTLE  
22 United States District Judge